

The motion must succeed. There could be no possible room for doubt if the words of the red ink clause had been "any action in any Court," instead of "any action in a Division Court." If such was the intention of the legislature, then it can easily be carried into effect. If no such alteration is made, then the question of the effect of a literal compliance with the Act must be left for determination. But where, as in the present case, the statute has not been complied with, I think the proviso in the contract has no effect.

Order made changing venue. Costs in cause.

ANGLIN, J.

MAY 9TH, 1905.

CHAMBERS.

HILL v. EDEY.

Summary Judgment—Rule 603—Action on Agreement to Pay Money in Settlement of Claim—Repudiation of Settlement—Authority of Solicitor—Case for Jury—Unconditional Leave to Defend.

Appeal by plaintiff from order of local Master at Ottawa, ante 689, dismissing a motion for judgment under Rule 603.

J. F. Orde, Ottawa, for plaintiff.

G. F. Henderson, Ottawa, for defendant.

ANGLIN, J.:—The action is brought to enforce an alleged agreement for settlement of a claim . . . by plaintiff. . . . The settlement, if any, was effected on 28th February, between Mr. Glyn Osler, solicitor for plaintiff, and Mr. A. W. Fraser, solicitor for defendant.

The Master expressed the opinion that an agreement was then concluded, but was unable, upon the evidence before him, to find that Mr. Fraser's authority had been satisfactorily established.

Whatever view might be taken of the evidence, were I dealing with this action as a trial Judge, it, in my opinion, falls short of what is requisite to support a motion for judgment under Rule 603. While I entertain no doubt whatever that Mr. Osler fully believed that Mr. Fraser had in fact made an offer to settle for \$1,500, Mr. Fraser's evidence is, I think, reasonably clear that he had no authority to make such an offer, and did not at any time intend to do more than to ascertain the lowest sum which plaintiff could be induced to